

offer on the board and, incident to the execution of such buying order, accepts such offer and all other offers posted at prices equal to or lower than the offer posted by him;

(2) Such member executes such orders in the presence of an official representative of such contract market designated to observe such transactions and, by appropriate descriptive words or symbol, clearly identifies all such transactions on his trading card or other similar record, made at the time of execution, and notes thereon the exact time of execution and promptly presents said record to such official representative for verification and initialing;

(3) Such contract market keeps a record in permanent form of each such transaction showing the transaction date, by whom executed, the exact time of execution, quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, whether a put or a call, and strike price; and

(4) Neither the futures commission merchant receiving nor the member executing such orders has any interest therein, directly or indirectly, except as a fiduciary.

(b) *Large Order Execution Procedures.* A member of a contract market may execute simultaneous buying and selling orders of different principals directly between the principals in compliance with large order execution procedures established by written rules of the contract market that have been approved by the Commission: *Provided*, That, to the extent such large order execution procedures do not meet the conditions and requirements of paragraph (a) of this section, the contract market has petitioned the Commission for, and the Commission has granted, an exemption from the conditions and requirements of paragraph (a) of this section. Any such petition must be accompanied by proposed contract market rules to implement the large order execution procedures. The petition shall include:

(1) An explanation of why the proposed large order execution rules do not comply with paragraph (a) of this section; and

(2) A description of a special surveillance program that would be followed by the contract market in monitoring the large order execution procedures.

The Commission may, in its discretion and upon such terms and conditions as it deems appropriate, grant such petition for exemption if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition shall be considered concurrently with the proposed large order execution rules.

(c) *Not deemed filling orders by offset nor cross trades.* The execution of orders in compliance with the conditions herein set forth will not be deemed to constitute the filling of orders by offset within the meaning of paragraph (iv) of section 4b(a) of the Act, nor to constitute cross trades within the meaning of paragraph (A) of section 4c(a) of the Act.

(Approved by the Office of Management and Budget under control numbers 3038-0007 and 3038-0022)

[41 FR 3194, Jan. 21, 1976, as amended at 46 FR 63035, Dec. 30, 1981; 47 FR 57008, Dec. 22, 1982; 56 FR 12344, Mar. 25, 1991; 59 FR 5525, Feb. 7, 1994]

MISCELLANEOUS

§1.40 Crop, market information letters, reports; copies required.

Each futures commission merchant and each member of a contract market shall, upon request, furnish or cause to be furnished to the Commission a true copy of any letter, circular, telegram, or report published or given general circulation by such futures commission merchant or member which concerns crop or market information or conditions that affect or tend to affect the price of any commodity, and the true source of or authority for the information contained therein.

(Approved by the Office of Management and Budget under control number 3038-0015)

[41 FR 3194, Jan. 21, 1976, as amended at 46 FR 63035, Dec. 30, 1981]

§1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

(a) *Definitions.* For purposes of this section:

(1) The term *rule* of a contract market means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, or by the governing board thereof or any committee thereof.

(2) The words *terms and conditions* mean any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, specification of settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions shall be deemed to include provisions relating to the following:

(i) Quality or quantity standards for a commodity and any applicable exemptions or discounts;

(ii) Trading hours, trading months and the listing of contracts;

(iii) Minimum and maximum price limits and the establishment of settlement prices;

(iv) Position limits and position reporting requirements;

(v) Delivery points and locational price differentials;

(vi) Delivery standards and procedures, including alternatives to delivery and applicable penalties or sanctions for failure to perform;

(vii) Settlement of the contract; and

(viii) Payment or collection of commodity option premiums or margins.

(3) The term *contract market* includes a clearing organization that clears trades for the contract market.

(4) The term *emergency* means any occurrence or circumstance listed in this paragraph (a)(4) which, in the opinion of the governing board of the contract market, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any contracts on such contract market. Occurrences and circumstances which a governing board of a contract market may deem emergencies are limited to the following:

(i) Any manipulative activity or attempted manipulative activity;

(ii) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;

(iii) Any circumstances which may materially affect the performance of contracts traded on the contract market, including failure of the payment system;

(iv) Any action taken by the United States or any foreign government or any state or local governmental body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on the contract market;

(v) Any circumstances which may have a severe, adverse effect upon the physical functions of a contract market including, for example, fire or other casualty; bomb threats; substantial inclement weather; power failures; communications breakdowns; computer system breakdowns; screen-based trading system breakdowns; malfunctions of plumbing, heating, ventilation and air conditioning systems; and transportation breakdowns.

(vi) The bankruptcy or insolvency of any member or member firm of the contract market or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a member of the contract market which may affect the ability of that member to perform on its contracts;

(vii) Any circumstance in which it appears that a member or any other person has failed to perform contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such person cannot be permitted to continue in business without jeopardizing the safety of customer funds, members of the contract market, or the contract market; and

(viii) Any other unusual, unforeseeable and adverse circumstance with respect to which it is not practicable for the contract market to submit, in a timely fashion, a rule to the Commission for prior review under section 5a(a)(12)(A) of the Act.

(5) The term *governing board* of a contract market means the board of directors, the board of governors, the board of managers or any other similar body of the contract market or any committee duly authorized, pursuant to a rule of the contract market that has been approved by the Commission or has become effective pursuant to section 5a(a)(12)(A) of the Act to take action for and on behalf of the contract market with respect to an emergency.

(6) The term *two-thirds vote* of a governing board of a contract market means the affirmative vote of two or more persons constituting not less than two-thirds of the members of such governing board either (i) physically present and voting at a meeting of such governing board at which a quorum of at least one-third of the members is physically in attendance or (ii) voting in any manner other than at a meeting of such board at which a quorum of at least one-third of the members is physically in attendance as permitted by applicable state corporation law.

(7) The term *temporary emergency rule* means a rule adopted by a "two-thirds vote" of the governing board of a contract market to meet an emergency.

(8) The term *affiliated firm* of a person means any firm in which the person is a general partner, officer, director, principal, employee, or owner of more than ten percent of the equity interest.

(b) *Rules that relate to terms and conditions.* (1)(i) Except as provided herein and in paragraph (f) of this section, all proposed contract market rules that relate to terms and conditions must be submitted to the Commission for approval pursuant to section 5a(a)(12)(A) of the Act prior to their proposed effective dates. One copy of each such rule submitted under this section shall be furnished to the Commission at its Washington, DC headquarters, and, excluding submissions under paragraphs (h) through (t) of this section, one copy shall be furnished to the regional office of the Commission having local jurisdiction over the contract market. Provided, however, that for submissions under appendix A to part 5 of the Commission's Regulations with respect to contract market designation applications, three copies of such submissions shall be furnished to the Commission

at its Washington, DC headquarters. Each submission under this paragraph (b) shall, in the following order:

(A) Label the submission as being submitted pursuant to § 1.41(b);

(B) Set forth the text of the proposed rule (in the case of any change in, addition to, or deletion from any current rule of the contract market, the current rule shall be fully set forth, with brackets used to indicate words to be deleted and underscoring used to indicate words to be added);

(C) Describe the proposed effective date of the proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the contract market, or by the governing board thereof or any committee thereof, and cite the rules of the contract market which authorize the adoption of the proposed rule;

(D) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anti-competitive effects on market participants or others, how the rule fits into the contract market's scheme of self-regulation, information which demonstrates that the proposed rule is not inconsistent with the policies and purposes of the Act, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the contract market, set forth the pertinent text of any such rule and describe the anticipated effect; and

(E) Note and briefly describe any substantive opposing views expressed by the members of the contract market or others with respect to the proposed rule which were not incorporated into the proposed rule prior to its submission to the Commission.

(ii) The Commission may remit to the contract market, with an appropriate explanation where practicable, and not accept for review any rule submission that does not comply with the form and content requirements of paragraphs (b)(1)(i) (A) through (E) of this section.

(2) All proposed contract market rules that relate to terms and conditions submitted for review under paragraph (b)(1) shall be deemed approved by the Commission under section 5a(a)(12)(A) of the Act, forty-five days after receipt by the Commission, unless notified otherwise within that period, if:

(i) The contract market labels the submission as being submitted pursuant to Commission rule 1.41(b)—Fast Track Review;

(ii) The submission complies with the requirements of paragraphs (b)(1)(i) (A) through (E), of this section or for dormant contracts, the requirements of § 5.2 of this chapter;

(iii) The contract market does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period; and

(iv) The contract market has not instructed the Commission in writing during the review period to review the proposed rule under the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b)(1) of this section.

(3) The Commission, within forty-five days after receipt of a submission filed pursuant to paragraph (b)(2) of this section, may notify the contract market making the submission that the review period has been extended for a period of thirty days where the proposed rule raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraph (b)(2) of this section shall be extended for a period of thirty days.

(4) During the forty-five day period for fast-track review, or the thirty-day extension when the period has been enlarged under paragraph (b)(3) of this section, the Commission shall notify the contract market that the Commission is terminating fast-track review procedures and will review the proposed rule under the usual procedures of section 5a(a)(12)(A) of the Act and paragraph (b)(1) of this section, if it appears that the proposed rule may violate a specific provision of the Act, reg-

ulation, or form or content requirement of this section. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of this section that the proposed rule appears to violate. Within ten days of receipt of this termination notification, the contract market may request that the Commission render a decision whether to approve the proposed rule or to institute a proceeding to disapprove the proposed rule under the procedures specified in section 5a(a)(12)(A) of the Act by notifying the Commission that the contract market views its submission as complete and final as submitted.

(c) *Rules that do not relate to terms and conditions.* (1)(i) Except as provided in paragraphs (d) and (f) of this section (exempt or temporary emergency rules), each contract market shall submit to the Commission pursuant to section 5a(a)(12)(A) of the Act prior to the proposed effective dates all proposed rules that do not relate to terms and conditions. One copy of the rule shall be furnished to the Commission at its Washington, DC headquarters, and one copy shall be transmitted by the contract market to the regional office of the Commission having local jurisdiction over the contract market. Each such submission under this paragraph (c) shall, in the following order:

(A) State that it is being submitted pursuant to Commission regulation 1.41(c);

(B) Set forth the text of the proposed rule (in the case of any change in, addition to, or deletion from any current rule of the contract market, the current rule shall be fully set forth, with brackets used to indicate words to be deleted and underscoring used to indicate words to be added);

(C) Describe the proposed effective date of the proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the contract market, or by the governing board thereof or any committee thereof, and cite the rules of the contract market which authorize the adoption of the proposed rule;

(D) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anti-competitive effects on market participants, or others, how the rule fits into the contract market's scheme of self-regulation, information which demonstrates that the proposed rule is not inconsistent with the policies and purposes of the Act, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the contract market, set forth the pertinent text of any such rule and describe the anticipated effect;

(E) Note and briefly describe any substantive opposing views expressed by governing board members, members of the contract market, or others with respect to the proposed rule which were not incorporated into the proposed rule prior to its submission to the Commission. Any such description also should identify the membership interest categories, as that term is defined by Commission regulation 1.64(a)(4), of persons who were opposed to the proposed rule; and,

(F) Identify any sections of the Act or the Commission's regulations that the Commission may need to amend or interpret in order to approve or allow into effect the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the contract market must provide a reasoned analysis supporting its submission.

(ii) The Commission may remit to the contract market, with an appropriate explanation where practicable, and not accept for review any rule submission that does not comply with the form and content requirements of paragraphs (c)(1)(i) (A) through (F) of this section.

(iii) The Commission may notify the contract market within ten days after receipt of a submission filed pursuant to paragraph (c)(1) of this section, that the proposed rule raises novel or complex issues which require additional time for review or is of major economic significance and therefore that the re-

view period has been extended as specified in paragraph (c)(3) of this section. This notification will briefly specify the nature of the issues for which additional time for review is required.

(2) All proposed contract market rules submitted for review under paragraph (c) of this section may be deemed approved or be placed into effect, as appropriate, ten days after Commission receipt (or at such earlier time as may be determined by the Commission) unless:

(i) The Commission notifies the contract market that the submission does not comply with the form and content requirements of paragraph (c)(1)(i) of this section;

(ii) The Commission notifies the contract market that the review period for the submission has been extended pursuant to paragraph (c)(1)(iii) of this section; or

(iii) The contract market agrees to another, specified review period.

(3) Any rule for which the Commission extends the review period pursuant to paragraph (c)(1)(iii) of this section may be deemed approved or be placed into effect, as determined by the Commission, forty-five days after Commission receipt of such rule or seventy-five days after Commission receipt in the case of rules that have been published for comment in the FEDERAL REGISTER (or at such earlier time as may be determined by the Commission) unless the Commission notifies the contract market that:

(i) The submission, including any supplementary materials and in consideration of any comments from the public or other government agencies, does not comply with the form and content requirements of paragraph (c)(1)(i) of this section; or

(ii) The Commission intends to institute a proceeding to disapprove the rule pursuant to the procedures specified in section 5a(a)(12)(A) of the Act.

(4) A notice of intention to commence a disapproval proceeding issued pursuant to paragraph (c)(3) of this section will:

(i) Identify the nature of the issues raised by the proposed rule and the specific sections of the Act or the Commission's regulations that the rule appears to violate; and,

(ii) State that the Commission may commence disapproval proceedings for the proposed rule within thirty days after the Commission's issuance of the notification, unless within fifteen days of receipt of such notice the contract market:

(A) Withdraws the rule, or

(B) Requests the Commission to review the rule pursuant to the one hundred and eighty day review procedures set forth in section 5a(a)(12)(A) of the Act.

(d) *Rules that are exempt from the requirements of section 5a(a)(12)(A) of the Act.* (1) Except as otherwise provided by §§ 1.63 and 1.64, contract market rules that do not relate to terms and conditions are exempt from the requirements of section 5a(a)(12)(A) of the Act and this section where such rules address:

(i) Standards of decorum or attire or similar provisions relating to admission to the floor, badges, visitors, but not the establishment of penalties for violations of such rules;

(ii) Requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds;

(iii) Correction of typographical errors, renumbering, or other such non-substantive revisions of rules;

(iv) Procedures and forms for the purchase, sale or transfer of membership, but not including qualifications for membership, any right or obligation of membership, or dues or assessments;

(v) The organization and administrative procedures of a contract market's governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements and procedures or requirements or procedures relating to conflicts of interest;

(vi) The declaration of holidays;

(vii) Facilities housing the contract market or physical changes in the trading floor or trading area; or

(viii) The routine, daily administration, direction and control of contract market employees.

(2) Rules that are exempt from the requirements of section 5a(a)(12) of the Act in accordance with the provisions of this paragraph (d) shall nonetheless be submitted to the Commission pursuant to the provisions of section 5a(a)(1) of the Act. Each such submission shall

be labeled as being submitted pursuant to section 5a(a)(1) of the Act and paragraph (d) of this section. One copy of each such submission shall be furnished to the Commission at its Washington, DC headquarters.

(3) Notwithstanding the provisions of this paragraph (d), a contract market may submit any such rule to the Commission for its approval pursuant to the provisions of section 5a(a)(12)(A) of the Act and paragraph (b) of this section.

(4) The Commission may remit to the contract market, with an appropriate explanation where practicable, and not accept pursuant to this paragraph any rule which the Commission determines to be a rule that is not exempt from the provisions of section 5a(a)(12)(A) of the Act and paragraphs (b) or (c) of this section.

(e) *Membership lists.* Upon request of the Commission each contract market shall promptly furnish to the Commission a current list of the contract market's membership.

(f) *Temporary emergency rules.* In the event of an emergency, a contract market, by a two-thirds vote of its governing board, may place into immediate effect a temporary emergency rule to deal with the emergency without prior Commission approval, and without compliance with the ten-day notice requirement pursuant to section 5a(a)(12)(A) of the Act and paragraphs (b) and (c) of this section, respectively, subject to the following provisions:

(1) A temporary emergency rule, including any modification thereof, may not extend beyond the duration of the emergency, as determined by the contract market; but in no event shall a temporary emergency rule, or any modification thereof, continue, without express Commission authorization, beyond 30 days after the temporary emergency rule is first put into effect. In no event shall a temporary emergency rule, or any modification thereof, remain in effect for more than 90 days after the temporary emergency rule is first put into effect.

(2)(i) A contract market must make every effort practicable to provide notice to the Commission that it intends to implement, modify or terminate a

temporary emergency rule prior to implementing, modifying or terminating the rule. If it is not practicable for the contract market to notify the Commission prior to taking emergency action, the contract market shall provide the Commission with notice of the implementation, modification, or termination of any emergency rule at the earliest possible time. Notice must be given to the Director of the Division of Trading and Markets or any employee of the Commission, as may be designated by the Director for such purpose. The contract market must provide notice to the Commission by the fastest means available and must use its best efforts to ensure that the notice is actually received by one of the authorized persons above. Notice should include:

(A) To the extent practicable, a complete explanation of the contract market action intended or taken to meet the emergency and a description of the nature of the emergency;

(B) In any instance where a contract market does not provide prior notice of an emergency action, an explanation of why it was not practicable for a contract market to provide such notice; and

(C) An explanation of why it was not practicable for the contract market to submit the temporary emergency rule to the Commission for prior review under section 5a(a)(12)(A) of the Act.

(ii) Any available documentation of the nature of the emergency conditions and the intended or actual emergency action should be submitted at the time of notification.

(3) On or before the fifth day after the day that a contract market provides notice under paragraph (f)(2), except as described in paragraph (f)(4), the contract market shall supplement its notice by submitting the following information to the Commission at its Washington, DC headquarters:

(i) A written copy of the temporary emergency rule and any modification to or termination of the rule;

(ii) A complete written explanation of the emergency action, which explanation must include a complete description of any matter voted on that related to the emergency; a summary of the substantive reasons in support of

and in opposition to any matter voted on that related to the emergency given at a meeting in which the members implemented, modified, or terminated a temporary emergency rule; the names of all persons who were members of the governing board at the time of the meeting; the names of all persons who attended the meeting in person or who were otherwise present by electronic means; the name of any person who rescued himself from the meeting, the reason for recusal, and the time that the recusal occurred; the approximate time that notice of the meeting was given to each governing board member and the times that the meeting began and ended; the name of any person who was directed to abstain from deliberating or voting at the meeting; an itemized list of how each governing board member voted; and a summary of any disclosure made by a person of his or her positions in any subject contract market, including disclosure of positions held in any personal account, controlled account, other account in which a person has an interest, and customer and proprietary accounts at a person's affiliated firm;

(iii) Any documentation, not previously provided, relating to the emergency conditions and the emergency action, including documentation regarding the reasons for the specific emergency action taken;

(iv) A description of the basis for and procedures followed by a governing board in making any determination as to the eligibility of an interested person to deliberate or to vote on matters relating to the emergency;

(v) Documentation of the gross positions held in any personal account, controlled account, other account in which the governing board member has an interest, and proprietary accounts at an affiliated firm, as well as documentation of the net customer positions held at an affiliated firm, by a governing board member who attended the meeting for the contract months that the contract market reasonably expects could be affected by the emergency action, provided that the contract market explains its reasons in writing for selecting less than all contract months in the subject contract market;

(vi) A representation from each governing board member who voted on an emergency action as to whether or not he had actual knowledge of individual customer positions at his affiliated firm at the time of the vote; and

(vii) Such other information as the Commission may require.

(4)(i) Within 10 days of the receipt from a contract market of all of the information required by paragraphs (2) and (3), or as soon as practicable thereafter, the Commission will make a determination to permit the temporary emergency rule to remain in effect, consistent with paragraph (1), unless it finds that the contract market's emergency action is:

(A) Arbitrary, capricious or an abuse of discretion;

(B) Lacking a reasonable basis in fact; or

(C) Taken in bad faith by the contract market or its officials.

(ii) If the Commission determines that the contract market's emergency action is arbitrary, capricious or an abuse of discretion; lacking a reasonable basis in fact; or taken in bad faith, then the Commission may, in its discretion and upon such terms and conditions as it deems appropriate, suspend the effect of the rule pending review under section 5a(a)(12)(A) or otherwise if it finds that suspension of the rule is not contrary to the public interest and the purposes of section 5a(a)(12) of the Act.

(5) The Commission will submit a report on its determination pursuant to paragraph (4) and the basis for this determination to:

(i) The affected contract market;

(ii) The Committee on Agriculture of the House of Representatives; and

(iii) The Committee on Agriculture, Nutrition, and Forestry of the Senate.

If the report is submitted more than 10 days after the Commission receives all of the information required under paragraphs (2) and (3) from a contract market, the report will include an explanation of why submission within 10 days from receipt of notification and explanation was not practicable.

(6) A determination by the Commission to suspend the effect of a rule under subparagraph (4)(ii) of this regulation will be subject to judicial review

on the same basis as an emergency determination under section 8a(9) of the Act.

(7) A temporary emergency rule may provide for, or may authorize the contract market, or the governing board thereof or any committee thereof, to undertake actions necessary or appropriate to meet the emergency, including, but not limited to, such actions as:

(i) Limiting trading to liquidation only, in whole or in part, or limiting trading to liquidation only except for new sales by parties who have the commodity to delivery pursuant to such sales;

(ii) Extending or shortening the expiration date for trading in contracts;

(iii) Altering delivery terms or conditions;

(iv) Modifying price limits;

(v) Modifying circuit breakers;

(vi) Ordering the liquidation of contracts, the fixing of a settlement price or the reduction in positions;

(vii) Ordering the transfer of contracts, and the money, securities, and property securing such contracts, held on behalf of customers by a member of the contract market to another member, or other members, of the contract market willing to assume such contracts or obligated to do so;

(viii) Extending, limiting or changing hours of trading;

(ix) Suspending trading; and

(x) Modifying or suspending any provision of the rules of the contract market, including any contract market prohibition against dual trading.

(8) A contract market shall not maintain in effect rules that are inconsistent with this regulation.

(9) Nothing in this section prevents the Commission from taking emergency action under section 8a(9) of the Act or from taking any enforcement action under section 6(c), 6(d), 6b, or 6c of the Act.

(10) Governing board members who abstain from voting on a temporary emergency rule pursuant to § 1.69 shall not be counted in determining whether such a rule was approved by the two-thirds vote required by this regulation. Such members can be counted for the purpose of determining whether a quorum exists.

(g) *Physical emergencies.* In the event the physical functions of a contract market are, or are threatened to be, severely and adversely affected by a “physical emergency,” such as fire or other casualty, bomb threats, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, screen-based trading system breakdowns or transportation breakdowns, a contract market official, duly authorized to take such action for and on behalf of the contract market with respect to such a “physical emergency” pursuant to a rule of the contract market that has been approved by the Commission or has become effective pursuant to section 5a(a)(12) of the Act and these regulations, may take any action authorized by such rule necessary or appropriate to deal with the emergency, including, but not limited to, suspending trading on the contract market. Suspension of trading in the contract market by such a designated official shall not continue in effect for more than five (5) days, except where the contract market has submitted in writing and the Commission has granted, for good cause shown, a request for an extension of time. A request for an extension of time must be given to the Director of the Division of Trading and Markets or any employee of the Commission, as may be designated by the Director for such purpose. If so authorized by such a rule of the contract market, the designated official may also order restoration of trading on the contract market, or removal of other restrictions imposed by the official as permitted by this paragraph (g), in the absence of action by the governing board of the contract market, upon a determination by such official that the “physical emergency” has sufficiently abated to permit the physical functions of the contract market to continue in an orderly manner. A contract market must notify the Director of the Division of Trading and Markets or any employee of the Commission, as may be designated by the Director for such purpose, of the implementation, modification or termination of a physical emergency action as soon as possible after taking the action.

(h) *Stock index contracts.* (1) Notwithstanding the provisions of paragraph (b) of this section, all changes in the composition, computation, or method of stock selection of a stock index in which a contract market is designated to trade futures contracts, or options on such futures contracts, shall be deemed approved by the Commission at the time such changes are adopted by a contract market if:

(i) The index is compiled for commercial purposes by an independent third party; and

(ii) The change is consistent with a rule of the contract market which has been approved by the Commission for this purpose which specifically defines, or establishes standards governing, the composition of the stock index upon which the designated futures contracts are authorized to trade.

(2) The contract market must provide to the Commission, upon special call, information regarding the composition, computation, or method of stock selection of the index, including any change or changes, or any other issues relating to the index, as instructed, and within such time, and for such a period, specified in the call.

(i) *Other index contracts.* (1) Notwithstanding the provisions of paragraph (b) of this section, all changes in the composition, computation, or method of selection of an index other than a stock index in which a contract market is designated to trade futures or option contracts shall be deemed approved by the Commission at the time such changes are adopted by a contract market if:

(i) The index is compiled by an independent third party whose business relates to the collection or dissemination of price information and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option contract;

(ii) The change is consistent with a rule of the contract market which has been approved by the Commission for this purpose, which specifically defines or establishes standards governing the composition of the index upon which designated futures or commodity options are authorized to trade;

(iii) The contract market provides the Commission with written notice of

the change within five days after the change is adopted by the contract market; and

(iv) The contract market labels the written notice as being submitted pursuant to paragraph (i) of this section.

(2) The Commission will, within ten days after receipt by the Commission of notice of a change in the composition, computation, or method of selection of an index, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b) of this section.

(j) *Survey lists.* (1) Notwithstanding the provisions of paragraph (b) of this section, all changes in lists of banks, brokers, dealers or other entities which provide price or cash market information to a contract market for purposes of computing cash settlement prices or a cash price series, or for defining deliverable supply, shall be deemed approved by the Commission at the time such changes are adopted by a contract market if:

(i) The change is consistent with a rule of the contract market which has been approved by the Commission for this purpose and which establishes standards or criteria for the persons or entities which qualify for the list;

(ii) The contract market provides the Commission with written notice of the change within three days after the change is adopted by the contract market; and

(iii) The contract market labels the written notice as being submitted pursuant to paragraph (j) of this section.

(2) The Commission will, within ten days after receipt by the Commission of notice of a change in such a list, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b) of this section.

(k) *Trading hours.* (1) Notwithstanding the provisions of paragraph (b) of this section and except in connection with an initial listing of a contract on an automated trading system, all changes in trading hours shall be deemed approved by the Commission at the close of business one business day after written notice of such a change is received by the Commission if:

(i) The change is not inconsistent with any provision of the Act or the Commission's regulations;

(ii) For a change that permits trading anytime between 6:00 p.m. and 7:00 a.m. local time in the city where the contract market is located, the contract market has previously received Commission approval for trading between such hours in at least one of its designated contracts; and

(iii) The contract market labels the written notice as being submitted pursuant to paragraph (k) of this section.

(2) The Commission will, within ten days after receipt by the Commission of notice of a change in trading hours, notify the contract market making the submission if it appears that the change is not consistent with some provision of the Act or the Commission's regulations. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b) of this section.

(l) *Trading months.* (1) Notwithstanding the provisions of paragraph (b) of this section, all changes in trading months shall be deemed approved by the Commission ten days after written notice of such a change is received by the Commission if:

(i) The change is consistent with a rule of the contract market governing the listing of trading months which has been approved by the Commission, and with the Act and the Commission's regulations;

(ii) The change does not provide for the listing of a trading month outside the currently established cycle of trading months; and

(iii) For proposals to delist previously listed futures or option contract months, the months to be delisted have no open interest at the time of delisting.

(iv) The contract market labels the written notice as being submitted pursuant to paragraph (l) of this section.

(2) The Commission will, within ten days after receipt by the Commission of notice of a change in the listing of trading months, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b) of this section.

(m) *Contract terms established by independent third parties.* (1) Notwithstanding the provisions of paragraph (b) of this section, changes in grades or standards of commodities on which futures or options contracts are based, which are established, selected or calculated by independent third parties and which are incorporated by reference as terms of a contract, shall be deemed approved by the Commission ten days after written notice of such a change is received by the Commission if:

(i) The grade or standard is established, selected or calculated by an independent third party for purposes other than solely for use in connection with a futures or options contract;

(ii) The change is consistent with a rule of the contract market which has been approved by the Commission for this purpose, and with the Act and the Commission's regulations; and

(iii) The contract market labels the written notice as being submitted pursuant to paragraph (m) of this section.

(2) The Commission will, within ten days after receipt by the Commission of notice of such a change, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b) of this section.

(n) *Other changes.* (1) Notwithstanding the provisions of paragraph (b) of this section, changes in the terms and conditions of a futures or option

contract other than those changes specified in paragraphs (h)–(m) of this section shall be deemed approved by the Commission at such time as the Commission shall specify if:

(i) The Commission notifies the contract market in writing, at the time of contract market designation, or such other time as the Commission may deem appropriate, that certain changes in terms and conditions may be submitted pursuant to the provisions of this paragraph;

(ii) The change is consistent with standards established by the Commission in its notification to the contract market of the applicability of this paragraph, and with the Act and the Commission's regulations; and

(iii) The contract market labels the written notice as being submitted pursuant to paragraph (n) of this section.

(2) The Commission will within ten days after receipt by the Commission of notice of a change submitted pursuant to this paragraph, notify the contract market making the submission if it appears that the change is not consistent with standards established by the Commission. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b) of this section.

(3) The Commission may at any time alter or revoke the applicability of this paragraph to any particular contract.

(o) *Option strike price listing procedures.* (1) Notwithstanding the provisions of paragraph (b) of this section, all changes in the number of strike prices listed, both initially when a contract for a specific expiration date is first listed for trading and throughout the life of that option contract, and changes in the strike-price interval(s) shall be deemed approved by the Commission 10 days after written notice of such change is received by the Commission if:

(i) The amended rule provides for a strike-price listing procedure that is specified and automatic.

(ii) The amended rule does not affect any option with open interest at the time the rule goes into effect.

(iii) The contract market labels the written notice as being submitted pursuant to Commission Regulation 1.41(o).

(2) The Commission will, within 10 days after receipt by the Commission of notice of a change in the strike price listing procedure of an option contract, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b) of this section.

(p) *Option last trading day specification.* (1) For purposes of this paragraph, an option on a future is an option contract that includes a provision for exercise of the option into an underlying futures contract. An option on a physical does not contain such a provision.

(2) Notwithstanding the provisions of paragraph (b) of this section, all changes in the last trading day of an option on a future or an option on a physical shall be deemed approved by the Commission 10 days after written notice of such change is received by the Commission if:

(i) For futures options not based on cash-settled futures contracts, the option expires not less than one business day before the earlier of the last trading day or first notice day of the underlying futures contract; for futures options based on cash-settled futures contracts, the option expires no later than the last trading day of the underlying futures contract; or, for options on physicals, the option expires not less than one business day before the earlier of the last trading day or first notice day of any non-cash-settled futures contract in the same or a related commodity, or no later than the last trading day of a cash-settled futures contract in the same or a related commodity.

(ii) The amended last trading day rule does not apply to any option with open interest at the time the rule goes into effect.

(iii) The contract market labels the written notice as being submitted pursuant to Commission Regulation 1.41(p).

(3) The Commission will, within 10 days after receipt by the Commission of notice of a change in the last trading day specification of an option contract, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12) of the Act and paragraph (b) of this section.

(q) *Option cabinet trade provisions.* (1) For purposes of this paragraph, a cabinet trade is defined as an option trade that represents a transaction whereby the per-contract value of the cabinet trade is less than the per-contract value associated with a trade at the existing minimum premium fluctuation specified in the contract market's rules for that option contract.

(2) Notwithstanding the provisions of paragraph (b) of this section, all initial specifications of, and changes to, option cabinet trade provisions shall be deemed approved by the Commission 10 days after written notice of such change is received by the Commission if:

(i) The initial specification of a cabinet trade rule or a change thereto provides that the per-contract value (or values) of the cabinet trade is (are) less than the per-contract value associated with a trade at the existing minimum premium fluctuation specified in the contract market's rules for that option contract.

(ii) The contract market labels the written notice as being submitted pursuant to paragraph (q) of this section.

(3) The Commission will, within 10 days after receipt by the Commission of notice of a change in the cabinet trade provisions of an option contract, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12) of the Act and paragraph (b) of this section.

(r) *Option serial month listing procedures.* (1) Serial options arise when exchanges list options with different expiration dates based on the same underlying futures contract month. Accordingly, and for purposes of this paragraph, a serial option is defined as a futures option contract which is based on the same futures delivery month but which expires earlier than the option contract expiring nearest to but before, or on, the last trading day of the underlying futures delivery month.

(2) Notwithstanding the provisions of paragraph (b) of this section, all initial specifications of, and changes to, the serial option listing procedures for options on futures (option contracts that include a provision for exercise into a futures contract) shall be deemed approved by the Commission 10 days after written notice of such change is received by the Commission if:

(i) The rule provides for a serial option listing procedure that is specified and automatic.

(ii) The contract market labels the written notice as being submitted pursuant to Commission Regulation 1.41(r).

(3) The Commission will, within 10 days after receipt by the Commission of notice of a rule change relating to the serial option listing procedure of an option on a futures contract, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b) of this section.

(s) *Option automatic exercise procedures.* (1) Notwithstanding the provisions of paragraph (b) of this section, all rules relating to automatic exercise provisions for options on futures shall be deemed approved by the Commission 10 days after written notice of such change is received by the Commission if:

(i) The rule provides for automatic exercise procedures that are specified and objective, apply to in-the-money options only, and provide an oppor-

tunity for option holders to override the automatic exercise provision.

(ii) The contract market labels the written notice as being submitted pursuant to Commission Regulation 1.41(s).

(2) The Commission will, within 10 days after receipt by the Commission of notice of a change in the automatic exercise procedures of an option contract, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b) of this section.

(t) *Financial standards for regular delivery facilities.* (1) Notwithstanding the provisions of paragraph (b) of this section, all changes in the financial standards or financial requirements for regular delivery facilities or comparable entities shall be deemed approved by the Commission 10 days after written notice of such change is received by the Commission if:

(i) The contract market includes evidence that the amended rule does not affect the regularity or delivery status of any existing facility declared regular by the contract market for the relevant commodity(ies) or likely candidates for regularity status.

(ii) The proposed requirement is specified in the rules, is objective and applies uniformly to all existing regular facilities as well as to all applications for regularity.

(iii) The proposed requirement is related solely for the purpose of ensuring the financial integrity of the regular facility(ies).

(iv) The contract market labels the written notice as being submitted pursuant to Commission Regulation 1.41(t).

(2) The Commission will, within 10 days after receipt by the Commission of a rule change relating to the financial standards or requirements for regular delivery facilities, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph or if the submission raises issues relating to the requirements of the

Commodity Exchange Act or the regulations promulgated thereunder. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12)(A) of the Act and paragraph (b) of this section.

(Approved by the Office of Management and Budget under control numbers 3038–0007 and 3038–0022)

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§ 1.41a Delegation of authority to the Directors of the Division of Trading and Markets and the Division of Economic Analysis to process certain contract market rules.

(a) The Commission hereby delegates, until the Commission orders otherwise, the following authority to the Director of the Division of Trading and Markets and to the Director of the Division of Economic Analysis, to be exercised by either of such Directors or by such other employee or employees of the Commission under the supervision of such Directors as may be designated from time to time by the Directors:

(1) Pursuant to § 1.41(b) or § 1.41(c), to determine whether to remit to a contract market and not accept for review any rule submitted pursuant to section 5a(a)(12)(A) of the Act and § 1.41(b) or § 1.41(c), where the Director determines that such rule submission does not comply with the form and content requirements set forth in § 1.41(b);

(2) Pursuant to §§ 1.41(b) or 1.41(c) to determine, and to notify a contract market, that:

(i) Pursuant to § 1.41(b), a rule submitted pursuant to section 5a(a)(12)(A) of the Act and § 1.41(c) relates to terms and conditions, as defined in § 1.41(a)(2);

(ii) Pursuant to § 1.41(c), a rule submitted pursuant to section 5a(a)(12)(A) of the Act and § 1.41(c) for implementation without Commission approval constitutes a rule that requires prior Com-

mission approval pursuant to a specific section of the Act or Commission regulations;

(3) Pursuant to § 1.41(c) to determine, and to notify a contract market, that:

(i) Rules submitted for implementation without Commission approval under § 1.41(c) do not require prior Commission approval under section 5a(a)(12)(A) of the Act and § 1.41(b) or § 1.41(c) and that such rules may become effective prior to the expiration of the ten day period following the receipt of such rules by the Commission;

(ii) Rules submitted for Commission approval under § 1.41(c) do not require prior Commission approval under section 5a(a)(12)(A) of the Act and § 1.41(b) or § 1.41(c) and may be made effective at the expiration of the applicable review period;

(iii) Rules submitted for Commission approval under § 1.41(c) raise novel or complex issues, or are of major economic significance, and that the review period has been extended pursuant to § 1.41(c)(1)(iii); and

(4) Pursuant to § 1.41(d), to determine whether to remit to a contract market any rule submitted pursuant to section 5a(a)(1) of the Act and § 1.41(d), where the Director determines that such rule submission is not exempt from the provisions of section 5a(a)(12)(A) of the Act and § 1.41(b) or § 1.41(c).

(5) Pursuant to § 1.41(h) through (t) to determine:

(i) Whether contract market rules submitted pursuant to section 5a(a)(12) of the Act and the provisions of § 1.41(h) through (t) comply with the provisions of § 1.41(h) through (t), as applicable;

(ii) To give notice that rules submitted pursuant to § 1.41(k) through (t) comply with the provisions of § 1.41(k) through (t), as applicable, and therefore shall be deemed approved prior to the end of the period specified in the applicable rule, commencing on the day the rule is received by the Commission at its Washington, DC headquarters;

(iii) If contract market rules submitted pursuant to the provisions of § 1.41(h) through (t) do not comply with the applicable provisions of these regulations, to notify the submitting contract market that such rules are therefore subject to the procedures specified